



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Petition 48 of 2013

ORANGE DEMOCRATIC  
MOVEMENT .....PETITIONER

AND

THE INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION.....RESPONDENT

JUDGMENT

1. After hearing the matter on 1<sup>st</sup> February 2013, we made the following decision, ***“Petition is dismissed with no order as to costs save that IEBC is directed to correct spelling mistakes or minor errors in respect of the names present on the list by the petitioner. For the avoidance of doubt, there should be no replacement or addition of names to be submitted.”***
2. The petitioner, the Orange Democratic Movement in its petition dated 30<sup>th</sup> January 2013 seeks an order that, *“A declaration that respondent accept, receive and confirm the petitioner’s list of candidates annexed to the supporting affidavit of Professor Peter Anyang’ Nyong’o sworn on 30<sup>th</sup> January 2013).*
3. According to the petitioner, it complied with the deadline set by the respondents in submitting its list of candidates when it submitted its list on 21<sup>st</sup> January 2013 when it discovered that the list contained certain errors and or omitted names of numerous candidates.
4. The respondent opposes the application on the basis of the provisions of **section 13** of the ***Election Act*** which provides;  
  
**13. (1) A political party shall nominate its candidates for an election under this Act at least forty-five days before a general election under this Act in accordance with its constitution and nomination rules.**  
  
**(2) A political party shall not change the candidate nominated after the nomination of that person has been received by the Commission:**

**Provided that in the event of the death, resignation or incapacity of the nominated candidate or of**

**the violation of the electoral code of conduct by the nominated candidate, the political party may after notifying the candidate that the party seeks to substitute, where applicable, substitute its candidate before the date of presentation of nomination papers to the Commission.**

**(3) Notwithstanding subsection (1), in the case of any other election, the Commission shall by notice in the prescribed form, specify the day or days upon which political parties shall nominate candidates to contest in a presidential, parliamentary or county election in accordance with its constitution or rules, which shall not be more than twenty-one days after the date of publication of such notice.**

The respondent's position is that the **section 13** does not permit re-opening of the list forwarded to the party.

5. In our view, a consideration of the case requires that parties affected be served in order to contest the fact of whether they are on this list or not. Furthermore, parties on the list have now acquired specific rights to contest the election on an ODM ticket and it would be improper to make orders without serving the parties affected.

6. We are also convinced that the matter of preparation of lists is really a matter for the party and not IEBC and if there are minor errors, the respective Returning Officers receiving nomination papers will no doubt give attention to this fact.

7. In view of our findings, it is not necessary to make a finding as to whether the list submitted under **section 13** of the *Elections Act* can be amended.

**Dated and Delivered at Nairobi** this 5<sup>th</sup> February 2013

**D.S. MAJANJA**

**JUDGE**

**W. KORIR**

**JUDGE**

**G. V. ODUNGA**

**JUDGE**